

SHARE ASSESSMENT ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James R. Gowans

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies provisions for assessing corporate shares.

Highlighted Provisions:

This bill:

- defines terms;
- describes how shares may be assessed;
- provides rules for assessing shares; and
- allows enforcement of assessments by various methods, including sale of shares

with unpaid assessments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

16-4-101, Utah Code Annotated 1953

16-4-102, Utah Code Annotated 1953

16-4-201, Utah Code Annotated 1953

16-4-202, Utah Code Annotated 1953

16-4-203, Utah Code Annotated 1953

16-4-204, Utah Code Annotated 1953

16-4-205, Utah Code Annotated 1953

30 **16-4-206**, Utah Code Annotated 1953
31 **16-4-301**, Utah Code Annotated 1953
32 **16-4-302**, Utah Code Annotated 1953
33 **16-4-303**, Utah Code Annotated 1953
34 **16-4-304**, Utah Code Annotated 1953
35 **16-4-305**, Utah Code Annotated 1953
36 **16-4-306**, Utah Code Annotated 1953
37 **16-4-307**, Utah Code Annotated 1953
38 **16-4-308**, Utah Code Annotated 1953
39 **16-4-309**, Utah Code Annotated 1953
40 **16-4-310**, Utah Code Annotated 1953
41 **16-4-311**, Utah Code Annotated 1953
42 **16-4-312**, Utah Code Annotated 1953

43 REPEALS:

44 **16-4-4**, as last amended by Chapter 29, Laws of Utah 1961
45 **16-4-5**, as last amended by Chapter 29, Laws of Utah 1961
46 **16-4-6**, as last amended by Chapter 29, Laws of Utah 1961
47 **16-4-7**, as last amended by Chapter 29, Laws of Utah 1961
48 **16-4-8**, as last amended by Chapter 29, Laws of Utah 1961
49 **16-4-9**, as last amended by Chapter 29, Laws of Utah 1961
50 **16-4-10**, as last amended by Chapter 29, Laws of Utah 1961
51 **16-4-12**, as last amended by Chapter 9, Laws of Utah 2001
52 **16-4-13**, Utah Code Annotated 1953
53 **16-4-14**, Utah Code Annotated 1953
54 **16-4-15**, as last amended by Chapter 29, Laws of Utah 1961
55 **16-4-16**, as last amended by Chapter 29, Laws of Utah 1961
56 **16-4-17**, as last amended by Chapter 29, Laws of Utah 1961
57 **16-4-18**, as last amended by Chapter 29, Laws of Utah 1961

16-4-19, as last amended by Chapter 6, Laws of Utah 1992, Third Special Session

16-4-20, as last amended by Chapter 29, Laws of Utah 1961

16-4-21, as last amended by Chapter 29, Laws of Utah 1961

16-4-22, as last amended by Chapter 29, Laws of Utah 1961

16-4-23, as last amended by Chapter 29, Laws of Utah 1961

16-4-24, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 16-4-101 is enacted to read:

CHAPTER 4. SHARE ASSESSMENT ACT

Part 1. General Provisions

16-4-101. Title.

This chapter is known as the "Share Assessment Act."

Section 2. Section 16-4-102 is enacted to read:

16-4-102. Definitions.

As used in this chapter:

(1) "Corporation" means a nonprofit corporation or a profit corporation.

(2) "Nonprofit corporation" means a nonprofit corporation as defined in Section

16-6a-102.

(3) "Profit corporation" means a corporation as defined in Section 16-10a-102.

(4) "Shares" means shares as defined in:

(a) Section 16-6a-102 for a nonprofit corporation; and

(b) Section 16-10a-102 for a profit corporation.

(5) "Water company" means a corporation in which a shareholder has the right, based on the shareholders shares, to receive a proportionate share of water delivered by the corporation.

Section 3. Section 16-4-201 is enacted to read:

Part 2. Assessments

16-4-201. Assessments.

(1) The shares of a nonprofit corporation are subject to assessment for any corporate purpose, except to the extent proscribed by the articles of incorporation.

(2) The shares of a profit corporation are subject to assessment if:

(a) those shares were subject to assessment before May 1, 2007; and

(b) the assessment is not proscribed by the corporation's articles of incorporation.

Section 4. Section **16-4-202** is enacted to read:

16-4-202. Procedure for assessment in absence of provisions in articles or bylaws.

(1) An assessment shall be levied in the manner this chapter provides, unless other commercially reasonable procedures are provided in the articles of incorporation or bylaws.

(2) Each assessment shall comply with the requirements of Section 16-4-203.

Section 5. Section **16-4-203** is enacted to read:

16-4-203. Equitable assessment.

(1) (a) Subject to Subsection (2), all shares subject to assessment shall be assessed equitably.

(b) Different classes of shares, and shares with different rights or benefits, may be subject to differing assessments.

(2) Shares may also be assessed on any basis required by:

(a) any existing or future contract between:

(i) the United States and a water company;

(ii) the United States and the shareholders of a water company; or

(iii) a water company and one or more shareholders of the water company; or

(b) any contract of subscription for shares in a water company contracting with the United States.

(3) For purposes of Subsection (2), "contract" does not include the articles of incorporation or the bylaws.

Section 6. Section **16-4-204** is enacted to read:

16-4-204. Order levying assessment -- Contents.

114 (1) An assessment may be levied by order of the board of directors.

115 (2) An order levying an assessment shall:

116 (a) specify the amount of the levy on each share;

117 (b) specify when, to whom, and where the assessment is payable; and

118 (c) identify the day on which an unpaid assessment becomes delinquent.

119 (3) The date on which an unpaid assessment is considered delinquent shall be at least
120 30 days after notice of assessment is given as provided in Section 16-4-206.

121 (4) If assessments are not levied on an equal basis for all shares, the order shall state
122 the equitable basis for the differing assessments.

123 Section 7. Section **16-4-205** is enacted to read:

124 **16-4-205. Notice of assessment -- Form and contents.**

125 When the board of directors levies an assessment, the secretary shall prepare a notice of
126 assessment, including:

127 (1) the name of the corporation;

128 (2) the location of the corporation's principal place of business;

129 (3) the date of the meeting at which the board of directors adopted the order levying the
130 assessment;

131 (4) a description of the class or classes of shares assessed, and the amount of
132 assessment per share;

133 (5) the time, place, and manner of payment;

134 (6) the day on which payment is considered delinquent;

135 (7) if assessments are not levied on an equal basis, a statement that the equitable basis
136 for the assessments is set forth in the order; and

137 (8) a general statement that the board of directors may elect various remedies to
138 enforce payment, including the auctioning of shares.

139 Section 8. Section **16-4-206** is enacted to read:

140 **16-4-206. Service and publication of notice of assessment.**

141 (1) The notice of assessment required by Section 16-4-205 shall be:

142 (a) personally served on each shareholder; or
143 (b) sent by first-class mail to each shareholder at the address shown on the
144 corporation's records.

145 (2) A shareholder is responsible for providing the shareholder's current mailing address
146 to the corporation for purposes of Subsection (1).

147 (3) (a) Except as provided in Subsection (3)(b), a notice of assessment shall be
148 published once a week for two weeks in a newspaper of general circulation in the location of
149 the corporation's principal place of business.

150 (b) A water company may elect not to publish notice under Subsection (3)(a).

151 Section 9. Section **16-4-301** is enacted to read:

152 **Part 3. Enforcement**

153 **16-4-301. Enforcement of assessment.**

154 (1) Payment of a delinquent assessment may be enforced by a corporation in one or
155 more of the following ways:

156 (a) imposition of a late charge, penalty, or interest;
157 (b) suspension of one or more benefits of share ownership, including the right to vote,
158 to transfer shares, or to delivery of water in the case of a water company;

159 (c) sale at public auction of the shares on which payment is delinquent; and
160 (d) any other enforcement method specified in the corporation's articles of
161 incorporation.

162 (2) In an enforcement action, the corporation may recover the delinquent assessment,
163 any late charge, penalty, or interest, and all costs of collection, including attorney fees.

164 (3) (a) The board of directors shall follow enforcement procedures:
165 (i) as set forth in the articles of incorporation or bylaws; or
166 (ii) as determined by the board of directors in a manner consistent with the board of
167 directors' fiduciary duty to shareholders.

168 (b) If the board of directors determines to sell shares at public auction, the board shall
169 follow the procedures required by Sections 16-4-302 through 16-4-312.

Section 10. Section **16-4-302** is enacted to read:

16-4-302. Notice of sale -- Form.

Upon a determination by the board of directors to sell shares on which payment of an assessment is delinquent and the adoption of an order to sell the shares, the secretary shall prepare a notice of sale, including:

(1) the name of the corporation;

(2) the location of the corporation's principal place of business;

(3) the date on which the assessment order was adopted;

(4) a description of the shares on which an assessment is delinquent, including the name of any owner, certificate numbers if share certificates exist, and the number of shares represented by any certificate;

(5) a description of the amount due and payable with respect to each share on which an assessment is delinquent, including the assessment, any late charge, penalty, or interest, and the estimated costs and expenses of collection;

(6) a statement of the date, time, and place of the sale of shares to pay the amount payable if the amount is not paid before the identified date; and

(7) a statement that if shares are purchased at the auction by the corporation, or a director or officer of the corporation for the benefit of the officer or director, the shares may be redeemed by the shareholder for a period of 30 days after the day on which the shares are sold.

Section 11. Section **16-4-303** is enacted to read:

16-4-303. Service and publication of notice of sale.

(1) The notice of sale required by Section 16-4-302 shall be:

(a) personally served on each shareholder whose share is subject to sale; or

(b) sent by certified mail, return-receipt requested, to each shareholder whose share is subject to sale at the address shown on the corporation's records.

(2) A shareholder is responsible for providing the shareholder's current mailing address to the corporation for purposes of Subsection (1).

(3) The notice required by Subsection (1) shall be served or mailed at least 15 days, but

not more than 30 days before the day on which the sale is to occur.

(4) A notice of sale shall be published once a week for two weeks in a newspaper of general circulation in the location of the corporation's principal place of business beginning at least 15 days but no more than 45 days before the day on which the sale is to occur.

Section 12. Section **16-4-304** is enacted to read:

16-4-304. Power of sale.

The service or mailing and publication of the notice of sale required under Section 16-4-303 gives a corporation power to sell and convey all the shares described in the notice of sale upon which any delinquent assessment or other amount remains unpaid at the time appointed for the sale.

Section 13. Section **16-4-305** is enacted to read:

16-4-305. Number of shares to be sold.

(1) On the day, at the time and place appointed for a sale under this part, the secretary or other officer shall sell at public auction to the highest bidder for cash the number of shares necessary to pay all amounts due on an overdue assessment.

(2) Shares shall be sold in the smallest fraction as authorized in the articles of incorporation or the bylaws.

(3) The public auction shall be conducted by open bid, sealed bid, or by other means provided in the articles of incorporation or bylaws that reasonably protects the delinquent shareholder's interest.

(4) Proceeds of a sale in excess of the assessment and other amounts due shall be promptly paid to the shareholder whose shares were sold.

Section 14. Section **16-4-306** is enacted to read:

16-4-306. Determining the highest bidder -- Transfer to highest bidder.

(1) (a) The person offering at a sale to pay the highest amount for the smallest number or fraction of shares, which may not be less than the delinquent assessment and all other amounts payable, is the highest bidder.

(b) Whether the bid is for the smallest number or fraction of shares is determined by

the articles of incorporation.

(2) The shares purchased shall be transferred to the highest bidder on the share books of the corporation upon payment of the bid amount.

Section 15. Section **16-4-307** is enacted to read:

16-4-307. Purchase by corporation, officer, or director -- Redemption.

(1) (a) If at the sale of shares, no bidder offers the amount of the delinquent assessment and all other amounts payable, the shares may be bid on and purchased by the corporation through the secretary, president, or any director for the amount of the delinquent assessment and all other amounts payable.

(b) If a corporation purchases shares under Subsection (1), the delinquent assessment and all other amounts payable shall be credited as paid in full on the books of the corporation.

(2) If purchased under Subsection (1), entry of the transfer of the shares to the corporation shall be made on the corporation's books.

(3) Any shares acquired by a corporation under this section, or purchased by an officer or director for the officer's or director's own benefit, are subject to redemption by the shareholder for a period of 30 days following the day on which the shares are sold at auction.

(4) (a) Shares subject to redemption under Subsection (3) may be redeemed at a price equal to the amount of the delinquent assessment and all other amounts payable on the day of the sale, plus interest through the day on which the shares are redeemed.

(b) The amount of interest under Subsection (4)(a) is the amount determined under Section 15-1-4.

Section 16. Section **16-4-308** is enacted to read:

16-4-308. Status of shares purchased by corporation, officer, or director.

(1) (a) Title to any shares purchased by a corporation under Section 16-4-307 vests in the corporation upon expiration of the 30-day redemption period if the right of redemption is not exercised.

(b) Shares purchased by a corporation under Section 16-4-307 are treated as treasury shares and shall be held and disposed of in a manner expressly provided for in Title 16.

Chapter 10a, Utah Revised Business Corporation Act.

(c) Any shares held by a corporation under this section are not assessable.

(d) No dividends or distributions may be made on shares held by the corporation.

(2) (a) Title to any shares purchased by an officer or director of the corporation for the officer's or director's own benefit vest in the officer or director upon expiration of the 30-day redemption period if the right of redemption is not exercised.

(b) Shares purchased by an officer or director for the officer's or director's own benefit are subject to all assessments levied by the corporation after the assessment that was the basis for the sale at which the officer or director purchased the shares.

Section 17. Section **16-4-309** is enacted to read:

16-4-309. Extension of time specified in notices.

(1) The dates fixed in any notice of assessment or notice of sale may be extended for up to six months by order of the board of directors entered on the corporation's records.

(2) No order extending the time for the performance of any act specified in any notice under this chapter is effective unless notice of the extension is published and served in the same manner as the original notice.

Section 18. Section **16-4-310** is enacted to read:

16-4-310. Error or omission in proceedings -- Effect.

(1) No assessment is invalidated by:

(a) a failure to serve, mail, or publish the notice of sale;

(b) the omission of any information required to be contained in the notice; or

(c) the nonperformance of any act otherwise required to be performed in connection with the sale of shares to enforce payment of an assessment.

(2) No sale is valid unless proper notice is given and any material acts of nonperformance are corrected.

Section 19. Section **16-4-311** is enacted to read:

16-4-311. Action to recover shares sold -- Tender -- Limitation of action.

(1) No action may be brought to recover shares sold for a delinquent assessment based

on irregularity or defect in the notice of sale or the sale unless the person bringing the action first pays or tenders payment to the corporation or to the person holding the shares sold:

(a) the amount for which the shares were sold;

(b) the amount of all subsequent assessments levied on the shares; and

(c) interest on the amounts identified in Subsections (1)(a) and (b) from the time the amounts were paid by the person purchasing the shares.

(2) No action may be brought to recover shares sold under this part more than six months after the sale of the shares at auction.

Section 20. Section **16-4-312** is enacted to read:

16-4-312. Affidavit and posting of notice -- Evidence.

(1) An affidavit made by the secretary of a corporation of the mailing of a notice required by this chapter is prima facie evidence of the existence and mailing of the notice.

(2) The publication of a notice under this chapter may be proved by the affidavit of the printer foreman or principal clerk of the newspaper in which the notice was published.

(3) The affidavit of the secretary of the corporation or the auctioneer responsible for selling shares is prima facie evidence of:

(a) the time and place of sale;

(b) the quantity and particular description of the shares sold;

(c) to whom and for what price the shares were sold; and

(d) the fact of the purchase money being paid.

(4) The affidavits referenced in this section shall be filed in the corporation's office.

(5) A copy of an affidavit referenced in this section is prima facie evidence of the facts contained in the affidavit if the affidavit is certified by the secretary.

Section 21. **Repealer.**

This bill repeals:

Section **16-4-4, Assessments -- Provision by statute or in articles of incorporation necessary.**

Section **16-4-5, Procedure applicable in absence of provision in articles or bylaws.**

- 310 Section **16-4-6, Limit on right to levy assessments.**
- 311 Section **16-4-7, Equal assessments required.**
- 312 Section **16-4-8, Order levying assessment -- Contents.**
- 313 Section **16-4-9, Notice of order of assessment -- Form and contents.**
- 314 Section **16-4-10, Service and publication of notice of order.**
- 315 Section **16-4-12, Notice of delinquency -- Form.**
- 316 Section **16-4-13, Delinquency notice -- Contents.**
- 317 Section **16-4-14, Publication of notice of delinquency.**
- 318 Section **16-4-15, Jurisdiction acquired by publication.**
- 319 Section **16-4-16, Amount of stock to be sold.**
- 320 Section **16-4-17, "Highest bidder" defined.**
- 321 Section **16-4-18, Purchase by corporation.**
- 322 Section **16-4-19, Status of stock purchased by corporation.**
- 323 Section **16-4-20, Extension of time specified in notices.**
- 324 Section **16-4-21, Errors or omissions in proceedings -- Effect.**
- 325 Section **16-4-22, Actions to recover stock sold -- Tender -- Limitation of action.**
- 326 Section **16-4-23, Affidavit of posting notice -- Who may make -- Evidence.**
- 327 Section **16-4-24, Irrigation companies -- Assessments -- Other than pro rata basis.**